IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR

O R D E R

Mahendra Lodha Vs. State of Rajasthan

D.B.CIVIL WRIT PETITION NO.6073/1993
UNDER ARTICLE 226 OF
THE CONSTITUTION OF INDIA.

Date of Order: February 19, 2007

P R E S E N T

HON'BLE MR.JUSTICE N.N.MATHUR
HON'BLE MR.JUSTICE MANAK MOHTA

Mr.M.Mridul, Senior Advocate, assisted by
Mr.P.S.Chundawat, for the petitioner.

Mr.N.M.Lodha, Additional Advocate General.

Mr.M.R.Singhvi)
Mr.Sanjeev Johari) for U.I.T.
Mr.R.S.Saluja, for Municipal Corporation.
Mr.J.P.Joshi)
Mr.Ravi Bhansali) for Border Road Organization.
Mr.Manish Shishodia, for Pollution Control Board.

REPORTABLE BY THE COURT: **(PER HON'BLE MR.MATHUR J.)**

1. **A man is known by the Company, he keeps and a City is known by Environment and Road System it keeps,**

Jodhpur heritage has some of the medieval flavour and ambience dotted places havelis, temples and houses washed in pale blue. The City and its people live in warfare gaze of imposing Mehrangarh Fort. The City continues to be thriving centre for handicrafts, sandstones, Steel re-rolling and other miscellaneous industries. It is the judicial capital of the State of Rajasthan. The environmental problems are gaining significance because of the rapid population growth, the aggressive speed of urbanization, lack of infrastructure and to add this, illegal concrete jungle coming up across the City unabated. **A public spirited and vigilant citizen of this City viz; Shri Mahendra Lodha by way of instant petition, has voiced grievance that the City is facing environmental problem because of lack lustre attitude of the Government, ineffective local bodies i.e. Municipal Corporation and the U.I.T. and lack of belongingness of some of the selfish attitude people.**

2. It is averred that the extra ordinary increase in the number of vehicles, smoke, vapour, spark, ashes, grit & oil emissions have totally polluted the environment of City of Jodhpur. It is also averred that the greatest villains of peace are tempos and trucks, as they emit smoke, vapour, ash in disregard to the statutory provisions. It is emphasized that the things have reached to the stage where one is almost inhaling poison on all

the busy roads of Jodhpur City.

3. Thus, the instant petition essentially pertains to the environment and the traffic management in the City of Jodhpur. The problem is not that simple, as it has many facets. The mere widening of roads or providing new roads do not solve the problem connected with the traffic of a city or town. The traffic management includes regulations for traffic control and guiding measures of traffic flow or traffic congestion, parking areas, roads system affecting traffic operations, engineering elements of road system, the conditions of automobiles, encroachments on roads, buildings abating the roads, cleanness and sanitation of roads and so on. The heavy rush of vehicles and pedestrians during peak hours of the day, results into overcrowding of road. Such condition is referred-to as traffic congestion and it develops due to various factors including faulty intersections, narrowness of roads, steep curves, haphazard parking of vehicles, physical encroachment on roads, absence of civic sense and lack of strict enforcement of traffic rules. The traffic congestion makes the surrounding area polluted with undesirables gases, vapour and odour increasing the chance of accidents. Driving through the traffic congested area becomes more tedious and it adversely affects on health of drivers of the vehicles and others. The people are to waste lot of time during traffic jams. It also causes

more wear & tear of the vehicle. There is national wastage of petrol and gasoline used for running automobiles because they do not attain the optimum speed for which they are designed. Thus, taking all this into account, this Court by order dated 26th July, 2000 directed the Collector and District Magistrate, Superintendent of Police and the R.T.O., Jodhpur to frame an appropriate scheme after taking into confidence the transport Operators, Lorry owners, various owners of the three wheelers' Association, Transport Association etc. The District Administration after having interactions with different organizations by way of workshops and meetings in smaller groups and after due deliberations submitted the scheme for proper traffic management in the City of Jodhpur. One and all present in the Court expressed that the things have gone out of control and it has not been possible for the authorities to control the situation without the judicial intervention. Inspite of the fact that petition is pending since 1993 and the menace instead of being controlled, continued to grow in perpetuation of this hazard to public safety, it was felt that it has become necessary for this Court to issue certain directions which were required to be promptly implemented to achieve the required results. Thus, this Court by a detailed order dated 21.11.2000 reported in 2001(1) RLW(Raj) 463 (Mahendra Lodha vs. State of Rajasthan), issued wide ranging directions and since then, continuously

monitoring the compliance of the orders of this Court. During the long period of six years, number of compliance reports have been submitted by the different departments. There have been pleasant and unpleasant occasions; pleasant in the sense that this Court appreciated the effective steps taken by different authorities and unpleasant because on various occasions, the authorities were pulled up inasmuch as on certain occasions, contempt proceedings were also initiated. There have been occasions of resistance of the orders of this Court. Thus, we proceed to take stock of the work undertaken during the period of six years as follows:

MOVEMENT OF HEAVY TRAFFIC WITHIN THE CITY AREA:

4. It was realized that on account of location of large number of transport Companies inside the City i.e. Jalori Gate, Old Stadium Maidan, near Olympic Cinema, Station Road and Paota `B' Road, there has been movement of heavy vehicles throughout the City causing traffic congestion and mismanagement. It was also brought to our notice that a decision was taken more than 20 years back for shifting of all the transport Companies outside the City in Transport Nagar established at Basni. Almost all the transport Companies were allotted commercial plots at concessional rates at the Truck

Terminus, Basni. The plots were allotted at concessional rates on the condition that they will shift to the newly allotted place of business within a period of one year. However, because of the political or money clout, they managed to continue to run their business from the locations inside the City. Thus, considering the gravity of the problem and defiance attitude of the transport Companies, strict directions were given for shifting all the transport Companies outside the city within a period of one week and in the event of furnishing an undertaking, within a period of three weeks. A complete ban was imposed on entry of heavy vehicles inside the City with effect from 8.12.2000. It was further directed that the violation of directions will lead to cancellation of the licenses of the trucks under Section 93 of the Motor Vehicles Act and seizure of the same. The vehicles were not allowed to be released by any authority except with the permission of this Court. The order was subsequently modified only to the extent that heavy vehicles will be permitted in the City only for the limited purpose for loading and unloading of goods during night hours i.e. 10 P.M. to 7 A.M. However, they were not permitted to park inside the City, even during the night time. For essential services during the day time, trucks were permitted for a specified period and that too, on permission being granted by the District Magistrate. At the initial stage, the transport Companies showed their attitude of defiance and

applications were also filed by the transport Companies for recalling the order. The order was challenged before the Apex Court by way of filing the Special Leave Petition, which came to be rejected by order dated 9/4/2001. The order of the Apex Court is extracted as follows:

> **"We are happy to note that atleast one High Court is taking trouble of cleaning up the area of its City in which it is situated.** Following the orders of this Court in M.C.Mehta's case, we see no reason to interfere with the directions, so issued. The Special Leave Petitions are dismissed."

5. The Court also ensured that the facilities are given to the transport Companies in the Transport Nagar. The compliance report was filed stating that all the transport Companies have shifted to the Transport Nagar and that the U.I.T. has provided necessary facilities to the transport Companies. The U.I.T. also indicated its intention to establish two more Transport and Automobile Nagars. In the final compliance report, it is stated that the Basni Truck Terminus has been fully developed. There exist no transport Company inside the City. The Transport and Automobile Nagar has been established in village Aangana and the other Transport Nagar is proposed in village Vivek Vihar Yojna.

6. On account of complete ban of entry of heavy vehicles inside the City, the police established five Check Posts on all Entry points of the City and diverted the movement of heavy vehicles through alternate routes. The trucks coming from Bikaner-Nagaur side were directed to pass through Mandore Chungi Naka meeting at Jaipur-Jodhpur Road. The vehicles from Delhi – Jaipur side were diverted to move towards Barmer-Jaisalmer and use another route through Dangiawas. The District Magistrate, Jodhpur by order dated 29.11.2000 specified the route of the vehicles coming from Bikaner, Jaisalmer and vice versa.

DEFENCE VEHICLES:

7. Directions were also given with respect to check of heavy vehicles belonging to different services i.e. Army and Air Force. As per the directions given, a meeting was convened in the office of the Divisional Commissioner along with the officials of the Army and Air Force. It is reported that the meeting was fruitful and it was agreed that heavy vehicles of the Defence Service shall follow the traffic rules punctually, they will not enter in the busy area of the City and park at the places determined for them.

8. The resultant effect of the orders is that now, **Jodhpur is one City in which almost no heavy vehicles are seen moving, except few vehicles permitted by the District Magistrate for essential services.**

BYEPASS:

9. On account of complete prohibition of heavy vehicles in the city, it has become necessary to ensure that the existing alternate routes are made roadworthy and further Byepass is provided. At the initial stage, the repairing work was undertaken to provide the alternate routes. The State Government was directed to prepare a plan to provide the byepass. It was brought to our notice that there existed a plan for providing a byepass for different routes but the same was not given priority by the Director General of Roads, Ministry of Surface Transport, New Delhi. Even the letter of the Hon'ble Chief Minister of Rajasthan at the relevant time to the Hon'ble Minister of Surface Transport did not yield result. Thus, a direction was given to the Ministry of Surface Transport, Government of India, to take a project on top priority. The Chief Engineer and the Ministry of Surface Transport, Government of India was asked to visit the City of Jodhpur alongwith other senior officers of the State Government. The meeting was convened at Jodhpur on 15th January, 2001.

Accordingly, the project was given priority at the State level as well as the Central level. The job was entrusted to Border Road Organization. The byepass was to be completed by March, 2005. The job was not completed during the scheduled time, for which, the Border Road Organization pointed out certain difficulties. At the first instance, they wanted some time for construction of bridge on Jojari river. Another was construction of flyover on the design being given by the Railway Administration. This Court gave a deadline to make the road functional atleast by providing a temporary causeway on the Jojari river and a temporary Railway Crossing near village Sangaria. We are happy to note that the road has been made functional. A prayer has been made by the Railway Administration to give some more time for construction of flyover. A similar prayer has been made by the Border Road Organization for construction of bridge on the Jojari river. The resultant position is that out of total length of the byepass i.e. 48.6 kms., the construction has been made to the extent of 39 kms. On construction of bridge on Jojari river, flyover as indicated above and completion of left out road of 9 km, entire traffic of all the routes presently passing through the City, will be diverted through said byepass. **This will not only make the City free from traffic congestion but will also change the complexion of the City in big way. We hope and trust that the Bypass shall be made operational in full**

swing latest by September, 2007.

FLYOVERS:

10. At this stage, we may also refer to the provisions for construction of the flyovers. In order to make the traffic smooth, the A.D.B. Undertook to construct flyovers at five places i.e. Mandore, Basni, Rasala Road and Mohanpura. It is reported that except Mohanpura, all the four flyovers have been constructed. It is also reported that the construction of Mohanpura-Nai Sarak flyover has not been accepted. Certain serious fatal defects in the design of the flyovers at Mandore and Basni have been pointed out. The defective design has made the area accident prone. We take serious view of the matter. If the Department does not take corrective measures within a period of two months, they shall be liable for heavy compensation in cases of accidents. The T.M.C. should look into the matter seriously.

PAL ROAD:

11. This Court also gave direction by order dated 25.11.2000 not to allow any encroachment on the Pal Road and to keep the width of the road not less than 200 ft. as provided in the Master Plan. Keeping in view the Barmer – Jaisalmer byepass, Pal Road

will emerge as significant entry road, the Town Planners must keep this aspect in their view. **All the encroachments on Pal Road to keep the width of the road not less than 200 ft. must be positively removed within a period of three months**.

TRAFFIC POLICE & THE TRANSPORT DEPARTMENT:

12. It was reported that 436 tempos were plying in the City. In addition, there were three wheelers, City buses and Mini buses. These vehicles were identified as one of the major cause of pollution. Thus, on careful consideration of the entire matter, a complete ban was imposed on moving of tempos on the main roads i.e. from Darpan Cinema to Sojati Gate, Railway Station and Jalori Gate. The number of City buses was also directed to be reduced to 250. It was also directed that on the main roads of the City, public vehicles more than 12 years' old, shall not be permitted to ply. Further, no vehicle shall be allowed to ply in the City unless it carries the valid permission under the pollution control certificate. The Court also took note of rash driving of the taxi drivers and misbehaviour of the drivers at public places. Thus, a direction was given to prescribe the uniform for the drivers. The owners of the City Buses or the tempos were directed to furnish the names of the drivers to the Dy.S.P.

(Traffic). Other conditions to discipline the drivers were also imposed. In order to check the excessive speed, a direction was given that no City Bus will be allowed to ply unless it is fitted with the suitable speed control device. It was also found that the traffic police is not equipped with the recovery van to be utilized for towing the vehicles parked in No Parking Zone or committing other parking offences. The police was also not equipped with the speed detecting device. Directions were also given to check misuse of red lights on vehicles by unauthorized persons. The vehicles were found fitted with multi tone horns giving succession to different horns or producing unduly harsh, shrill or alarming noise by some sort of device fitted. The police was directed to check the same. A direction was also given to give the additional duty to the C.J.M. to ensure the compliance of orders of this Court with respect to traffic management.

13. The Regional Transport Authority as well as the Deputy S.P. by way of filing affidavit reported that all the tempos have been baned from plying on the main road starting from Darpan Cinema to Jalori Gate via Sojati Gate and Railway Station. The alternate route has been provided behind the Public Park. The number of City Buses plying on the main road has been reduced as per the orders of this Court. The plying of buses and tempos has been re-scheduled. City buses have been painted with red

and yellow strips. It has been scheduled that the City Buses carrying yellow strips will run on the main road of the City from 1st to 15th of every month and City Buses carrying red strips on main roads of City from 16th to the end of month. This mechanism has reduced the number of City buses plying in the City from 500 to 250. Neither permits are issued nor renewal to any transport vehicle is granted which is of more than 15 years' old. The R.T.A. has prescribed khaki dress for the drivers of the City Buses. The drivers violating the conditions imposed, have been seriously dealt with. As regards the pollution control certificate, the District Transport Officer (Enforcement) alongwith four flyings regularly conduct inspections. The suitable speed control devices have been installed in all the City Buses. It has checked the fast movement of the buses in the crowded City area controlling their speed. Regular reports are being made to the Traffic Management Committee. The Government has posted four inspectors and four sub inspectors alongwith other police team for checking the vehicles particularly to ensure the compliance of orders of this Court. It is reported that the Transport Department is continuously checking the City Buses and keeping close vigil to ensure smooth flow in the City.

PARKING:

14. The directions were given to the U.I.T. to provide for pay parking for the private buses. It was further directed that any private bus found parked outside the pay parking area, shall face the consequence of prosecution under the Motor Vehicles Act including suspension or cancellation of the permit. On a subsequent date, there was a detailed deliberation with respect to pay parking and other parking in the City. As a result of discussion, following places were identified for establishing the pay parking:

> "i. Main Pali Road – just adjacent to Sulabh Complex near New Campus;
>
> ii. Shastri Circle to New Power House Road (Section-7) outside the boundary wall of the office of the Chief Engineer, G.W.D., Jodhpur;
>
> iii. Main Balotra road to New Power House – outside CAZRI office;
>
> iv. Akhaliya Choraya to Soorsagar – At Kamla Nehru Nagar, Sector-A, Extension-1 existing Bus Stand near Railway Line;
>
> v. Kaylana Choraya to Kaylana Jheel – Opposite Meera Colony, outside the Machiya Safari Park hall;
>
> vi. Late Kalyan Singh Kalvi Bus Stand – R.T.O. Office – On the main Jodhpur – Jaipur road, parallel to Railway Line;
>
> vii. At the land situated on main Jodhpur – Jaipur road,

opp. Army area in between Gajsingh Nagar and BJS and old Chungi Naka."

15. It was further reported that pay parking places inside the City area for two wheelers, four wheelers, private taxi have been identified as follows:

"i. Ghantaghar – Nai Sadak Yojna;
ii. Manji Ka Hatha Yojna;
iii. Stadium Shopping Centre Yojna;
iv. Between Stadium Cinema and Stadium Ground;
v. Main Olympic road proceeding towards Nehru Park."

16. Following parking places inside the City area have been identified:

"i.Anand Cinema Area;
ii. Ratanada Area;
iii. Near Mohanpura Overbridge on left side;
iv. Near Mohanpura Overbridge on right side;
v.Thar Handloom Area;
vi. Back side of Shanishcharji Than Area;
vii. Near Bhati Softy & Softy inside Jalori Gate;
viii. In front of Orthopadics Department, M.G.Hospital Area;
ix. Gandhi Maidan, Sardarpura Area;
x. Near Muse Khan Petrol Pump."

17. It is reported that survey work in Sardarpura and Soorsagar Zone has been done and 111 places have been identified for parking. The U.I.T. has provided Pay Parking at 10

places and Parking at 9 places. In pursuance of the order of this Court, the Chairman UIT constituted a team comprising of three Trustees and 4 officers of the U.I.T. to identify the places for parking. As per the recommendation of the said Committee, the Parking/Pay Parking places have been developed. The details of the Parking Places have been placed on record. It is also submitted that there are two commercial Schemes known as "Manji Ka Hatta" and "Shastri Nagar". There is provision of inbuilt parking places in both these Schemes. In Manji Ka Hatta, there are 9 inbuilt parking places and so also in Shastri Nagar, there are 6 inbuilt parking places. The U.I.T. has ensured that the said Parking places shall be developed by lining, carpeting and putting Signing Boards etc. The U.I.T. has also identified 14 points for parking places, a list of the same has been given. A summary of the Parking Places has been given as follows:

S.No.	***Particulars***	***No.of places***	***Capacity (E.C.U.)***
1.	Parking Places already notified (Annex.A)	16	443
2.	Parking Places pointed out (Annex.B)	22	446
3.	Inbuilt Parking Places in two scheme areas (Annex.C)	15	179
4.	Newly identified parking places (Annex.D)	14	615
	TOTAL	67	1683

18. It may also be stated that as per the practice, in each

parking place, 1/3 space is provided for parking of four wheelers, 1/3 space for three wheelers and so on. The Municipal Corporation has further identified 67 places for parking. It is also stated that the proposal for construction of multi storeyed parking near Mohanpura bridge has been approved. The Traffic police has also filed an affidavit that for proper parking of vehicles, the Crane interceptors have been deployed. The traffic Police has been deployed to maintain the traffic properly and not to permit the parking of vehicles at the places not earmarked as parking places. The parking of the vehicles in front of the multi storeyed buildings has been prohibited. It is insisted that parking should be done only where the area is marked in the approved plan. In case of multi storeyed buildings, it is insisted that the vehicles are parked only in the area, earmarked in the approved plan.

19. **The efforts made for providing the Parking Places and efforts of the police for proper parking of the vehicles, have given substantial results in the improvement of traffic management in the City of Jodhpur.**

PARKING – MULTI STOREY BUILDINGS:

20. This Court by order dated 21.11.2000 while noticing the

fact that many of the building owners and commercial complexes have converted the parking places into shops and godowns, directed the Chief Executive Officer, Nagar Nigam, Jodhpur to make a survey and identify such buildings. It was observed that this Court will consider to issue a direction to remove such shops and godowns and take appropriate steps for parking of vehicles within the bounds of the buildings. A list of such buildings was submitted before this court. By another order dated 2nd March, 2001, the Corporation was directed to ensure that no construction of commercial or residential premises is raised at the main roads or the sub lanes in the city of Jodhpur irrespective of the earlier permission of the Municipal Corporation or order of any court except the High Court or the Supreme Court, unless it has a provision for adequate parking facility. It was further directed to ensure that construction is raised strictly in accordance with the approved plan else they may face demolition proceedings. An application was filed by one Ashok Chaudhary and Jai Prakash Sharma, both residents of 1st `B' Road, Sardarpura pointing out that a big developer viz; Vaibhav Enterprises is raising a high rise building i.e. big residential/commercial complex having three basements and five floors, where there shall be large number of offices, show-rooms and residential premises. It was also submitted that the building is sought to be constructed on a road, width of which is very

short and the area in question is highly congested. A notice was given to the said developer, who was also restrained from raising further construction. In reply to the application, it was submitted that a large number of multi storeyed buildings and commercial complexes have been constructed in recent past. The said developer also furnished a list of 92 such buildings wherein the permission was issued by the Municipal Corporation, Jodhpur in disregard to the directions of this Court and bye laws. Considering all the facts & circumstances of the case, keeping in view that there has been no control on construction of high rise buildings and keeping in view the traffic hazard, safety, sewerage and sanitation, this Court constituted a committee to review the permission granted in all cases, list of which was given by M/s Vaibhav Enterprises. The Committee consisted of the Secretary, Urban Development, the Chief Town Planner, a police officer at the State level connected with traffic management not below the rank of Inspector General of Police and the Collector, Jodhpur as Member Secretary. It was directed that the said Committee will examine the entire issue in broad perspective and make a report to this Court. The relevant part of the order reads as follows:

> "The said Committee will examine the entire issue in broad perspective and make its report to this Court within a period of four weeks. It will be open for the said committee

> to give appropriate suggestion, to provide mandatory guideline in the matter of construction of high rise buildings with reference to traffic management, sewerage, sanitation, F.A.R., coverage area, safety etc. Until the report is received and considered, there shall be complete stay on the construction of high rise buildings in the City of Jodhpur, affecting the traffic on major roads."

21. Pursuant to the order of this Court, the said Committee examined various issues relating to construction of high rise buildings in the City of Jodhpur. The Committee constituted the Core Group of officers comprising of the Chief Executive Officer Nagar Nigam, Secretary U.I.T. Jodhpur, Additional S.P. (Traffic), A.D.M.(City) and Senior Town Planner. The Core Group was entrusted the responsibilities as follows:

> "(i) Identification of high rise buildings, affecting traffic on major roads of city of Jodhpur as per the directions of Hon'ble High Court after conducting detailed survey and placing before the committee authenticated list of such buildings.
>
> (ii) To provide authenticated information related to building rules/bye-laws followed by UIT and Nagar Nigam from time to time to the Committee.
>
> (iii) To provide authenticated relevant information related to procedure being followed by both UIT and Nagar Nigam for granting building permission to the Committee.
>
> (iv) To provide authenticated information in prescribed format (as approved by Committee) related to building permission given to the high rise buildings in question alongwith the relevant files of each case to the Committee.
>
> (v) To provide authenticated information in prescribed format (as approved by the committee) related to actual

position of each building as compared with the permissions given by the local body clearly mentioning the deviations from the sanctions.

(vi) Identification of areas in Jodhpur City where saturation in terms of use of infrastructure such as – roads, sewerage, sanitation, drinking water and traffic density etc. has been reached and identification of areas where restriction on construction of buildings are to be imposed keeping in view the heritage character of the city.

(vii) To provide any other information related to the subject of high rise buildings in Jodhpur City, required by the High Power Committee from time to time."

22. The Committee also inspected some of the high rise buildings affecting traffic on major roads in the City of Jodhpur. The Chief Town Planner as technical Member of the Committee, examined 11 representative files of the cases taken from the list of high rise buildings on random sampling basis. The Committee also gave hearing to the representatives of the various groups and discussed & considered the grievances and suggestions made by them. The Committee has given the report on different items as follows:

"BYE-LAWS:

23. Building Byelaws were prepared under Jodhpur Municipal Act, 1943 and came into force with effect from 1.11.1945 for regulating the building construction in Jodhpur City. Till

15.7.1997, the U.I.T. followed the Municipal Building Byelaws prepared under the Municipal Act, 1943 and which came into force on 1.11.1945 for Jodhpur City. The UIT prepared its own Building Byelaws and resolution for those, was passed in Trust meeting on 15.7.1997. The UIT Jodhpur Building Bye-laws 2001, based on Model Building Byelaws, were notified in the Gazette on 4.1.2002. The Nagar Nigam adopted the prevailing Building Byelaws of UIT, Jodhpur. Presently, the UIT Jodhpur Building Byelaws, 2001 as notified in the Gazette in January, 2002, are applicable to the Nagar Nigam as well as the UIT.

24. As per the latest Byelaws, a building with height of more than 15 meters is considered as a Multi-storey building. As per the Byelaws, a Multi-storey building cannot be permitted to be raised on a road having width less than 12 meters and in a plot area of less than 750 sq. meters. For parking, the requirements are given as follows:

(a) Residential	:	1 ECU for 75 sqm.
(b) Commercial	:	1 ECU for 50 sqm.
(c) Multiplex	:	+ 1 ECU for 10 seats.

25. The other requirements with respect to sewerage, sanitation, fire fighting, electricity, water harvesting system have

also been provided. The Committee has also referred-to Rajasthan Municipality (Compounding & Compromising of Offences) Rules, 1966. The said Rules permit compounding of offences pertaining to raising of construction in disregard to the Byelaws.

26. A person desiring to raise a construction in the City of Jodhpur is required to seek permission from the Municipal Corporation/UIT under Section 170 of the Municipalities Act. The power of grant of sanction is vested in the Board or the Corporation. It is brought to our notice that the Corporation has delegated the power to a Committee, popularly known as "the Building Committee". On an application being received in the prescribed proforma, the case is examined by a Legal Officer for title and J.En., A.En. And Draftsman for site position and map examination. A public notice is issued for inviting objections, if any. Thereafter, the case is placed before the Building Committee on recommendation of the Commissioner. The Building Permission Committee examines the case and takes decision regarding approval. On approval, due amount is deposited as per rules and building permission and maps are released with the signatures of J.En., A.En. and Commissioner. Similarly, in case of U.I.T., Jodhpur, on filing the application seeking permission to raise construction in case of residential

plots upto 270 sq. meters, the power is vested with the Deputy Town Planner, U.I.T. and in all other cases, with the Building Permission Committee. On approval, due amount is deposited as per rules and building permission and maps are released under the signatures of the Deputy Town Planner.

27. The Committee has also given the details of the high rise buildings mainly under the following heads:

> "1. Construction permission accorded as per rules and construction carried out is as per permission.
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> 2. Construction permission accorded as per rules but construction carried out is not as per permission.
>
> 3. Construction permission accorded is not as per rules but construction carried out is as per permission.
>
> 4. Construction permission accorded is not as per rules and construction carried out is not as per permission.
>
> 5. Construction carried out without permission."

28. The Committee has made the recommendations as follows:

> **"7.1 Buildings already constructed:**
>
> **1.** In cases where construction has been carried out as per permission, no action is required. However, in cases where construction permission has been accorded in contravention of building byelaws, the concerned local body will take action under rules against the responsible persons.

2. In cases where construction carried out is not as per permission, following corrective action will be taken:

i. Where basement or other spaces approved for parking purposes is being used for other purposes, the owner/user will be required to make alterations and bring the parking spaces in conformity with the approved plans within a period of one month. In case the owner/user does not do the above within one month, the concerned local body will execute the above alterations within two months. Expenses incurred by the local body for the above will be recovered from the owner as other municipal dues. Subsequently, the parking spaces will be got surrendered in favour of the concerned local body.

ii. Where the number of floors constructed exceeds the numbers permitted in the approved building plans, they will be compounded as per compounding rules after charging the compounding fee.

iii. Where construction permission is for residential purpose but commercial activities are being carried out in the buildings or parts thereof, a decision whether change of land use to commercial use may be permitted as per rules, will be taken.

iv. Non-compoundable parts of buildings and commercial buildings whose change of land use may not be permitted will be sealed by the concerned local body i.e. these will not be permitted to be used.

V. Where number of provided parking spaces is not as per bye-laws, but other provisions of building bye-laws in force have been met or are within compoundable limits, Rs.1.00 lac and Rs.2.00 lacs per short equivalent car unit (e.c.u.) will be charged for residential and commercial buildings respectively. In cases where compounding is to be done, the relaxation of parking by depositing the said amount will be available after compounding of the building after deposition of compounding fee. In cases the

building has non-compoundable portion the above amount will be allowed to be deposited only after sealing of non-compoundable portion. The money charged on account of shortage of parking shall be kept in separate bank account and shall be used for providing shared public parking only.

vi. Where compounding of construction is permissible under rules, compounding charges for built-up area in excess of the permissible built up area may be charged at 10% of D.L.C. Rates. This money shall be kept in separate account and shall be used for strengthening of urban infrastructure.

vii. The cases where compounding has been done against rules should be reviewed in the light of recommendations made at point no.(i) to (vi).

viii. The above options will be available only up to 31.12.06, thereafter punitive action shall be taken by the concerned local body as per law.

3. In cases where construction has been done without permission, following corrective action will be taken:

i. The owner/user will be required to apply for compounding as per rules within one month and concerned local body may regularize the construction as per rules. However, for shortage of parking in residential and commercial buildings Rs.2.00 lacs and Rs.4.00 lacs per e.c.u. Respectively may be charged while regularizing the construction. Penalty for construction without permission shall also be charged as given in 2(vi). The money charged on account of shortage of parking shall be kept in separate bank account and shall be used for providing shared public parking only.

ii. The portion which cannot be regularized shall be demolished. Also in cases where the owner does not apply within one month, the buildings shall be demolished.

7.2 Buildings under construction:

1. In cases where buildings are being constructed with permission given as per bye-laws and existing construction is as per approved building plans, construction may be allowed to continue. However, it may be ensured that the construction is completed as per approved building plan.

2. In cases where permissions have been granted in violation of existing bye-laws and the construction is as per the approved plan, the owners/user will be required to submit revised building plan as per the existing bye-laws and further construction should be done as per revised building plan. However, it may be ensured that the construction done till date of stay i.e. 18.8.2006 should be as far as possible protected. The concerned local body will take action under rules against the persons responsible for issue of construction permission in violation of bye-laws.

3. In cases where permissions have been granted as per existing bye-laws but there are deviations in the construction made till date, the construction made in violation of approved building plan should be demolished and it should be ensured that construction is done as per approved building plan.

4. In cases where construction is done without any permission, the owner should apply for building permission as per existing bye-laws within one month and construction should be done as per the approved building plan after obtaining valid permission. In case the construction done till date is not in conformity with the permission so obtained, the deviation should be demolished. It should be ensured that the construction of building is done as per permission.

5. In cases where permission has been granted in violation of existing bye-laws and the construction so far is in violation of approved building plan, the owner/user will be required to apply for construction permission as per existing building bye-laws within a period of one month and construction permission shall be revised and further construction will be done as per revised approved building plan. The construction done in violation of bye-laws should be

demolished.

7.3 For construction of high-rise (multi-storey) buildings in future:

The future norms should adopt a holistic town planning approach which must be based on parameters like population density, building density, traffic density, availability of parking space, pollution levels, availability of basic civic infrastructure etc. The norms should be such that they promote vertical expansion of Jodhpur city but at the same time prevents overcrowding in the already congested areas.

7.3.1 Building regulations and norms:

1. Specific provision of Urban Improvement Trust, Jodhpur (Urban Area, Building) Regulation 2001 are in force for Jodhpur urban area. The same are being followed by Nagar Nigam also as per their agreement dated 17.7.2000 with U.I.T. The same should continue. However Nagar Nigam should take necessary action for approval of the above rules by State Govt. expeditiously.

2. For compounding, U.I.T. is following Building Construction Compounding Resolution dated 15.7.1997. Nagar Nigam should follow the same guidelines. However, State Govt. may consider framing Model Compounding Rules for adoption by all U.I.T.'s and Municipal Bodies.

3. The following modifications in Urban Improvement Trust, Jodhpur (Urban Area, Building) Regulation 2001 are proposed:-

- All high rise (multi-storeyed) buildings may be permitted on roads having minimum width of 18 mtrs. At present the above buildings are permitted on roads 12 mtrs. wide.

- All high rise (multi-storeyed) buildings may be permitted on land of minimum 1000 sq. mtrs. area. At present the same are permitted on minimum 750 sq. mtrs. land area.

- No deviations from building plans approved as per building bye-laws may be permitted and no compounding should be done.

- Concerned agencies may be permitted to provide permanent connections of water, electricity, sewerage, telephone etc. only after issue of completion certificate as per rules by concerned local body.

7.3.2 Identification of zones:

It has been observed that permitting high rise (multi-storey) buildings throughout Jodhpur urban area is not desirable. Permission for high rise buildings (multi storeyed) should be granted after considering the carrying capacity of the existing infrastructural facilities viz; roads, sewerage, drainage, water, electricity, sanitation, etc. Other considerations should be parking space, fire safety, traffic density, green belts, heritage areas, proximity to aerodrome and defence establishments etc. For example, construction of high rise buildings in Parkota area of Jodhpur city will aggravate the traffic problems therein. Construction of high rise buildings in natural scenic areas, within heritage precincts and in surroundings of heritage areas spoil the quality of such areas.

Following zones have been tentatively identified where high rise (multi-storey) buildings shall not be permitted:

- City wall zone which includes area within city wall and near all city gates. Keeping in view the rising ground water level in walled city area, construction of basements shall also not be allowed in this zone.
- Zone notified as no construction zone by Ministry of Defence near Airforce & Aerodrome area.
- Sardarpura zone comprising of `A' & `B' main roads and 1st to 12th, `A', `B', `C' & `D' roads.

Other zones may be identified as and when required.

7.3.3 Procedural changes :

Procedure for grant of construction permission:

It has been observed that the procedure for granting construction permission requires improvement. The committee recommends that building permission should be granted after technical clearance by a Technical Committee comprising of Secretary U.I.T. / C.E.O. Nagar Nigam as chairperson and Head of Town Planning wing of U.I.T. /Nagar Nigam as Member Secretary. Other members should include Head of Technical Wing of U.I.T. / Nagar Nigam, Superintending Engineer, PHED and JDVVNL and Police Officer in charge of Traffic of Jodhpur city. The above Technical Committee will assist the Building Plan Approval Committee of concerned local body and the case should be presented before the Building Plan Approval Committee only after clearance by the above Technical Committee.

Procedure for monitoring of ongoing construction:

a. After approval of above Building Plan Approval Committee, construction permission for only upto ground floor level will be released to the applicant. Upon being informed by the applicant regarding construction upto ground floor level being ready for inspection, the same will be inspected by the concerned technical officer who will certify that the construction carried out so far is as per approved plans. Only thereafter, the remaining floor plans will be released to the applicant for forther construction.

b. Upon completion of the building, the owner will submit a declaration to the concerned local body informing regarding completion of the building and certifying its structural, earthquake, earthquake, fire, electrical, etc. safety and sufficiency of vehicle parking areas. The above declaration will be the basis for issue of Occupancy Certificate.

c. The owner shall be required to deposit a security amount varying from Rs.5.00 lacs to Rs.20.00 lacs depending upon the size of the plot, at the time of

issuing of building permission for ensuring compliance of following:-

i. Construction of Rain Water Harvesting structure.
ii. Provision for fire and earthquake safety as per National Building Code stipulations.
iii. Availability of greenery and plantation as per rules.
iv. Provision of parking as per Building bye-laws.

7.3.4 Identification of Parking Spaces :

The committee also recommends that the city should have enough no. of basement parking as well as multi-layered parking. CEO, Nagar Nigam and Secretary, U.I.T. will identify the sites fit for such parking locations.

7.3.5 Strengthening of Sewerage System of Jodhpur city:

Nagar Nigam and UIT should prepare sewerage system project and submit to the concerned authority. The project should have provision for strengthening of existing sewerage system as well as inclusion of left out areas.

7.3.6 Responsibility of Nagar Nigam and Urban Improvement Trust, Jodhpur :

Implementation of recommendations of this committee and directions of Hon'ble High Court thereupon for execution of the same would be the responsibility of Nagar Nigam & U.I.T.

8.0 Conclusion :

Construction of high rise buildings which add to the urban quality of any city is related to several aspects which have been not available to Jodhpur city. Building bye-laws covering essential building parameters first came in force only on 15.7.1997. Even the existing building bye-laws now require improvements. Technical manpower for proper examination of building plans as well as for ensuring

> execution as per approved building plans at site has been highly insufficient in Nagar Nagam as well as U.I.T. Enforcement wings of Nagar Nigam and U.I.T. Also need to be strengthened. There is a serious requirement for increase in public awareness on issues related to planned urban growth Urban infrastructure requires major augmentation."

29. We are not proceeding further with the matter of high rise buildings, as the order of this Court with respect to multi storeyed buildings has been stayed by the Apex Court on a Special Leave to Appeal filed by the Vaibhav Enterprises. A copy of the order of the Apex Court dated 13th October, 2006 passed in D.B.Civil Misc. Application No.1967/2006 has been placed on record. In view of the interim order of the Apex Court, nothing is further required to be done in the matter.

TRAFFIC – OUTSIDE RAILWAY STATION:

30. Having noticed the traffic mismanagement outside the Railway Station, a notice was given to the Railway Administration as well. The Railway Administration was directed to depute some officer to attend the meeting of the Traffic Management Committee. It appears that the Committee headed by the Divisional Commissioner apprised the officer concerned of the Railway Administration about the traffic congestion outside the Railway Station. The Railway Administration filed an affidavit

stating that the entire problem was examined by the Committee constituted by the appropriate authority. A second gate has been provided on the other side of the Railway Station to reduce the congestion. On making the second gate operational, the congestion had been reduced to a great extent on the main gate. As regards the chaos around the main entrance of the Railway Station caused by unruly parking of the auto rickshaws and other vehicles on the main road, a plan has been placed before us. It was also pointed out that the Railway Administration has provided separate and adequate parking lots for Army vehicles, Govt. vehicles, private cars, Auto richshaws and car taxis. It was pointed out that circulating area outside the Station can be further improved if the STD Booth known as "Hello Hut" is got vacated. It was pointed out that a dispute in that regard is pending in the Civil Court. An attempt was made to bring some sort of conciliation between the Railway Administration and the party but unfortunately, the same did not succeed. Suffice it to say that we are satisfied that the Railway Administration has taken effective steps for managing the traffic outside the Railway Station. The file concerning "Hello Hut" be returned to the concerned Court forthwith.

REMOVAL OF ENCROACHMENTS:

31. It was reported that one of the major reasons of congestion on the main road is encroachment by the shop keepers or by local vendors more particularly on Nai Sarak, Station Road, Sojati Gate, Jalori Gate, Sardarpura `B' Road and Chopasni Road. Thus, the concerned authorities were directed to remove encroachments from the said area. This Court by order dated 2nd March, 2001, re-emphasized for removing the encroachments on the main roads from Mahamandir to Akhaliya Choraya, Pratap Nagar to Chopasni Road upto first Puliya, Nai Sarak, Sardarpura `B' Road and main markets inside the old walled City. It was explained that the removal of encroachments will include the verandahs as well. It was also reported that in Khanda Falsa and Kabootron Ka Chowk towards Gandhi Chowk and Pungalpada, there is a big milk market. Large number of milkmen with drums and vehicles collect on the roads and cause lot of harassment and difficulty both for the pedestrians as well as vehicles passing through. It was also reported that inhabitants of the area have encroached the public land by construction of Chabutaries. The narrow space left out was largely covered by big milk drums on both the sides of the motor vehicles practically blocking the entire road. The concerned authorities were directed to remove the encroachments from the said area. During the

encroachment proceedings, some difficulties of the shop keepers were pointed out. Thus, a clarification was given that the shop keepers may be permitted to construct the steps outside the shops as per the specification provided by the Corporation/U.I.T. The specification was approved by this court. It was further noticed that a major cause of mushroom growth was the inaction on the part of the Administration. To curb the evil, this Court directed to divide the City in four Zones and put each Zone under the vigil of a responsible officer with a duty to ensure that there is no re-growth of encroachment. Certain officers were directed to file an affidavit quarterly before this Court certifying to the effect that in his area, there is no encroachment on footpath and pavements. It was further directed that re-encroachments in any area assigned to an officer shall be visited with a penalty after a departmental enquiry. The U.I.T. and the Municipal Corporation have filed the compliance reports as to the removal of encroachments as per the directions of this Court. **The biggest achievement was the liberation of Akhaliya Choraya from the long time encroachments.** The U.I.T. also submitted a design for developing a new market in Akhaliya Choraya. Another affidavit was filed stating that all the verandahs on the Nai Sarak have been cleared from encroachments and the same has been made available for the smooth movement of the pedestrians. We are satisfied with the

exemplary work done on the Akhaliya Choraya and Verandahs on the Nai Sarak.

SHIFTING OF ELECTRIC POLES, TRANSFORMERS & HORDINGS:

32. It was noticed that at various places, the electricity poles and transformers were creating problem in the City. The directions were complied with. It was submitted that 471 poles have been shifted. At various places, the transformers and hoardings have been shifted.

SHIFTING OF PUBLIC BUILDINGS IN ORDER TO REDUCE THE CONGESTION FROM THE HIGH COURT ROAD:

33. This Court by order dated 21.11.2000 also directed the State Government to explore the feasibility of shifting of main offices and Courts including the High Court to reduce the pressure on the existing main route. This part of the direction was not taken seriously by the State authorities, as such, a further direction was given by the order dated 3rd August, 2001. The order runs in about 11 pages. We do not consider it necessary to refer the entire order. The operative part of the order reads as follows:

> "Consequently, we direct the State Government to take up the matter of construction of a new High Court Building at

> Jodhpur on top priority. A copy of this order shall be delivered to the Chief Secretary and Law Secretary to the Govt. of Rajasthan latest by 7.8.2001. The Chief Secretary to the Govt. of Rajasthan is directed to take up the matter at the appropriate higher level before the State Government as well as the Central Government. The Chief Secretary will submit a compliance report by filing an affidavit on or before 10th September, 2001."

34. In compliance of the order of this Court dated 3.8.2001, Mr.Inderjeet Khanna, the then Chief Secretary, State of Rajasthan, filed an affidavit expressing willingness on the part of the State Government for construction of new building of the High Court. The order dated 25.9.2001 which runs in about 12 pages, is not required to be referred in detail. Another order in this regard was passed on 14.2.2002. Another detailed order was passed on 15.4.2002. At this stage, a reporting appeared in one of the regional newspapers about the traffic management in the High Court building itself. Thus, certain directions were given to the District Administration in that regard. Suffice it to say that the directions and compliance reports have been noticed in the order dated 15.4.2002, which are extracted as follows:

DIRECTIONS:	***COMPLIANCE:***
17(a) The open space at the back of the Treasury office covered by tin shed and old garage	***The open space at the back of the Treasury office covered by tin shed and old garage have been vacated.***
17(b) The entire area behind the office of the city Magistrate i.e. existing Car parking shed and the Urinal etc:	The entire area behind the City Magistrate and car parking have been vacated.

17(c) The premises used by the Cycle & Scooter Stand in front of Labour Court, given on contract:	The contract of the premises in front of Labour Court has been changed and that area is vacated.
17(vii) The District administration is directed to get the place in front of District Court cleaned and make it available for the parking of the Scooters and Cars within a period of one week.	The spaces in front of District Court has been cleaned and is made available for parking within stipulated time.
17 (viii) The Collector, Jodhpur is directed to ask the State Bank of India to close the entry from the side of the District Court. They may open their entry from the other side.	The entry of the State Bank of India from the side of District Court has been closed. The gate has been opened from D.R.D.A. Side.

35. The State Government took up the issue seriously and asked the High Court to select the site. We are happy to record that issue has been taken seriously by the State as well as by the High Court and the land has been allotted. The other necessary formalities are complete. We hope that shifting of the High Court Building would definitely reduce the traffic congestion on the High Court Road to a great extent.

CITY ROADS:

36. It is informed that total length of roads of City of Jodhpur is 142.55 kms, out of which three National Highways i.e. NH-65 Nagaur-Jodhpur, NH-112 Barmer-Bilara-Jodhpur-Balotra-Barmer and NH 114 Jodhpur-Pokaran passes. Total length of the National Highways passing through the City of Jodhpur comes to around 54.00 kms. It is reported that almost on all the National

Highways, the patch work has been done. It is reported by the National Highway Authorities that some part of the roads of National Highways is damaged due to continuous overflow of sewerage lines and occasional leakage of water of supply lines, which are required to be repaired by the Public Works Department. The substantial part of the roads is maintained by the P.W.D. The Municipal Area has been divided in three parts viz; City Area, Sardarpura Area and Soorsagar Area, the substantial roads of the City are maintained by the Urban Improvement Trust. In the Chopasni Housing Board Area and Madhuban Colony, there are about 39 roads. So at one stage, it was reported that repairing of all the roads has been completed. It is reported that the repairing/patching work has not yielded the requisite relief.

SOLID WASTE MANAGEMENT:

37. This Court by order dated 2nd March, 2001 gave direction with respect to technology adopted for storage, collection, transportation and disposal of waste. Further directions were given for submitting a plan for conversion of organic waste/ biodegradable waste into Bio Organic Fertilizer (Compost) etc. A compliance report in this regard has been submitted in this regard recently on 29.11.2006. The Municipal Corporation has

taken effective steps and established a Solid Waste Treatment Plant at Keru. The plan is yet to start functioning. Details have been furnished to us as to the improvement made in the matter of lifting of waste, its route chart, time and date schedule etc. It is stated that big collection centres have been earmarked at different places. Green waste of hotels shall be directly taken to the Keru plant. It is stated that Nagar Nigam will make the Robot machine fully functional by the end of this month. It is also stated that awareness Camps regarding the garbage and their disposal will be organized from time to time.

SEWERAGE:

38. A direction was given to prepare a Blue print for reviving and maintenance of drainage and sewerage system inside and outside the City Wall of Jodhpur. It is reported that under the Sewerage Master Plan, the City was divided into four master drainage zone i.e. Jhalamand, Pal, Punjla and Industrial area. It is reported that the entire Sewerage project has been completed. Recently, the Traffic Management Committee visited the Nandri Kallan Sewerage Project, which is having a capacity of 20 MLD. It is stated that the project is found to be operational, which is enough for the requirement of next 34 years. The Camps are being organized to encourage people to take benefit

of the sewerage lines. For the better use of treated water, the P.H.E.D. was required to transfer the substantial amount collected in the name of Sewerage to the Municipal Corporation. It is reported that the substantial amount has been paid to the Municipal Corporation and the remaining amount of 208.83 lacs shall be paid latest by 31st March, 2007. It is also brought to our notice that the Nagar Nigam will identify worst sewerage points that need immediate attention through outsourcing by 31.3.2007. For public awareness, the projects details will be placed on their website. The steps are being taken for upgrading the present sewerage system.

TRAFFIC MANAGEMENT COMMITTEE:

39. The meetings of the Traffic Management Committee under the chairmanship of the Divisional Commissioner are being regularly held. Before the matter is placed before the Court, the report is received by the Divisional Commissioner. It is found that the monitoring by the Divisional Commissioner has been proved to be very useful and effective.

CORE COMMITTEE OF LAWYERS:

40. This Court by order dated 12.4.2006 constituted a Core

Committee of lawyers headed by Shri Marudhar Mridul, Senior Advocate, Mr.Ramrakh Vyas and Mr.B.L.Maheshwari to take stock of all the orders passed by this Court so far and to the extent, they have been complied with by the State and the local authorities. The brief summary of the report submitted, is given as follows:

i. The project report for the Outer Ring Road and Inner Ring Road be considered favourably;

ii. Looking to the vehicular pollution, presently prevailing in the City, appropriate direction be given for all the public vehicles to use CNG instead of petrol or diesel;

iii. With the expansion of Housing Board Schemes and other Schemes, the traffic has increased manifold, as such, appropriate direction be given for widening the road proceeding from Akhaliya Choraya towards Chopasni Road. Similarly, the road proceeding from Residency Road to Boranada is further required to be widened. The obstructions on the way in the form of trees, electric poles etc. be removed. While permitting removal of trees, appropriate directions be given to plant equal number of trees;

iv. The plan submitted by Mr.Govind Singh, a senior citizen, with respect to widening of roads, particularly from Railway Station to Sojati Gate, Nai Sarak and Old Stadium be considered;

v. The efforts made as to checking of pollution needs to be strengthened more seriously. Serious efforts are to be made to check the movement of unruly City Buses. The private buses are being parked in the busy areas in haphazard manner. These buses are mega buses and even double deckers which occupy substantial area of land. Appropriate direction is required to be given to the authorities to earmark land where the Stands for private buses can be provided. They should be located at four corners on the outer periphery of the City;

vi. The depot of the R.S.R.T.C., presently situated near the Railway Overbridge, adjacent to Vegetable & Fruit Market, be shifted, as this has become a hazard and accident prone. The land which becomes available on account of shifting of depot of RSRTC, may be made available to Vegetable & Fruit Mandi, which is already in shambles being at a very narrow space;

vii. The dustbins provided by the Municipal Corporation are in bad shape. The waste from dustbins is not being disposed-of regularly. It is suggested that putting in place a Collection

System according to which a Cycle Rickshaw may go around the colonies, collect the waste and then dump the same at the fixed place. It is also suggested that for this purpose, the residents of the area may be saddled with the liability of making payment to these persons through their Mohalla Samitis or by some other method;

viii. There are large number of small scale industries emitting smoke and all sorts of pollutants inside the City of Jodhpur. They are in operation without any licence. Chabutaris have been constructed making the narrow roads narrower still. Appropriate direction is required to be given in that regard;

ix. The parking area presently available outside the Railway Station for Cars and two wheelers is not sufficient. Appropriate direction is required to be given in that regard to the Railway Administration. It is also suggested that just adjacent to the parking place, there is an old Railway Colony which is extended upto M/s Sanghi Brothers. It is suggested that the Colony may be shifted somewhere else and this area may be utilized for the parking place. It is also suggested that looking to the future need of 50 years, the entire building of M/s Sanghi Brothers be acquired. A further direction is required to be given to the Railway Administration to provide necessary facilities which may

make the other gate of the Railway Station sufficiently operative.

x. Looking to the fact that the vehicular traffic has increased manifold, appropriate direction may be given for multi storeyed parking near the Mohanpura overbridge and the land owned by Chandsa Takiya;

xi. The roads which have been laid by P.W.D. and other departments are qualitatively extremely poor;

xii. Appropriate direction be given to the Divisional Commissioner to invite and permit the participation of the citizens.

41. As a result of the continuous monitoring, the situation has substantially improved. Still, the grievance has been voiced with respect to non-compliance of some of the orders passed by this Court. It is stated that irrespective of the fact that there is a total ban on entry of heavy vehicles in the City of Jodhpur, there are escape entries through streets and other unimportant highways. Regarding plying of the City Buses, it is stated that some laxity is noticed in the matter of checking of vehicles, particularly the City Buses being driven rashly. The City Buses and tempos do not stop at the designated places. The order with respect to parking

of heavy vehicles inside the City after loading and unloading work is complete, is not being followed seriously. By and large, there is dis-satisfaction with the work done by the A.D.B. It is submitted that removal of encroachment should be taken as a regular process and not as a drive only. The re-encroachment cases should be viewed very seriously. The responsibility be fixed on staff and all the officers concerned. Simply providing parking or pay parking places, is not sufficient. Some more seriousness is required to be shown. With respect to the Solid Waste Management, the people are not being properly educated at the use of plastic buckets. The conditions of parkings have not been improved. The constructions are being raised in the parks of the Colonies.

42. **On overall consideration, we are satisfied that the administration of directions given by this Court from time to time since November, 2000, has eventually resulted in precipitating the whole situation. There comes to be noticed visible changes on many fronts, as indicated above.** The Core Committee of lawyers has also also recorded the satisfaction as follows:

> "Hon'ble Court has been kind enough to reckon numerous problems facing the situation and indeed but for the intervention of the Court and but for the monitoring by a

> continuous mandamus, lot much has happened in the City to its good. The humble submission of the Committee is that **this process should be kept as an on going process and the Hon'ble Court may continue to make directions from time to time**."

43. We have given our thoughtful consideration to the prayer to continue the process of continuous mandamus. **A writ of mandamus is an order in the form of a command directed to an administrative authority or other authority** required to perform a specific duty fixed by law or associated with the public office. It is obvious that it is primarily for the Executive to advise suitable measures and to provide the machinery for rigid enforcement all those measures to deal with the problems as raised in the instant petition. However, a doubt has been expressed about the extent of powers of the concerned authorities to take adequate and suitable measures for the speedy enforcement of the existing provisions which if properly enforced, would take care of the problems raised. Thus, there is a need of judicial intervention. **The Courts have been making judicial intervention concerning violation of human rights, environmental problems etc. as an on going judicial process.** The initiative in the direction of the environmental problem was provided on a writ petition filed before the Supreme Court in public interest in the case of M.C.Mehta v. Union of India (1985). Since then, its numerous and diverse

orders activated the Central Government, the State Administrations and the Local bodies towards their Constitutional obligation under Article 21 of the Constitution of India. In M.C.Mehta's case (supra), the Court innovated the principle of continuous mandamus. Since then, it has been resorted in large number of cases. Reference be made to Vineet Narain's Case reported in 1998(1) SCC 226. **The writ procedure in the public interest litigation has to be speedy and to ensure that, directions given in the public interest, are faithfully and punctually complied with. The judicial innovation requires continuous supervision or monitoring the prospective judicial orders. In a public interest litigation, the role of the court is that of a catalyst (a substance that increases the rate of chemical reaction). Justice A.S.Anand, former Chief Justice of India, dealing with the judicial activism, observed that judiciary can only act as alarm clock but not as a time keeper. After giving the alarm call, it must ensure to see that the executive performs its duties in the manner envisaged by the Constitution. It must be remembered that the Courts cannot run the Government nor the administrative indulge in abuse or non use of power and get away with it. Judges are expected to be circumspect and self disciplined in the discharge of their judicial functions. The danger of**

judiciary creating a multiplicity of rights without possibility of adequate enforcement will in the ultimate analysis be counter productive and will undermine the creditability of the Institution. A care must be taken that inadvertently or overzealously, the instrumentality of the Courts is not exercised to be polluted thereby eroding public trust and confidence in the Institution. Judicial activism is delicate exercise involving creativity. Great skill is required for innovation. There is a danger of populism imperceptibility influencing the psyche. Public adulation must not sway the judges and personal aggrandizement must be eschewed. It is imperative to preserve the sanctity and creditability of the judicial process. As already observed, in a public interest litigation, the role of the Court is that of a catalyst. Judicial whistle is blown. It is now for the executive and the people to take the things to the logical conclusion. We only say that we are satisfied that the ball has been set in motion and, as such, we do not consider it appropriate to continue with the matter as an on going process for an indefinite period.

44. Before we close the case and give final directions, we record our appreciation for the valuable assistance rendered by

the learned advocates of the Core group of lawyers viz; Shri Marudhar Mridul Senior Advocate, Shri B.L.Maheshwari and Shri Ram Rakh Vyas. We also record our appreciation for the valuable assistance rendered by Shri R.L.Jangid former Additional Advocate General and Shri N.M.Lodha, Additional Advocate General. We also record our deep appreciation for all the officers of the State Government and the local authorities, who have done their best in complying with the directions of this Court to achieve the pious object of the instant public interest litigation.

45. Consequently, the writ petition is disposed-of as follows:

(i) The Jodhpur City and the areas contiguous have progressively developed and populated. In the orderly and rapid development of the area, several Government departments, local authorities and other Organizations are not only required to be engaged but there is a necessity to bring the coordination among them. Thus, it would be expedient to consider to set up an authority in the line of Jaipur Development Authority i.e. to say **Jodhpur Development Authority;**

(ii) The State Government is directed to ensure the compliance of the order dated 21.11.2000 passed by this Court within a time schedule as to shifting of public buildings including the High

Court and other Courts/Tribunals in order to reduce the congestion from the High Court Road;

(iii) The effective directions and compliance thereon, has substantially reduced the traffic congestion from the City but this should not be taken as the end of the matter, as the directions given by this Court from time to time and compliance thereon, are bound to have effect on the future development of the City changing its complexion. It is directed that the orders given by this Court from time to time be enforced effectively;

(iv) The byepass which was promised to be made operational by the end of December, 2006, could not be completed for the reasons given. The time for the same is extended upto September, 2007. We hope and trust that the said job shall be completed during the stipulated period i.e. September, 2007;

(v) In the matter of laying down the roads and maintenance inside the City by different agencies viz; National Highway Authorities, P.W.D., U.I.T. and the Municipal Corporation, substantial work has been done. However, the complaint is that the roads laid down by the P.W.D. and the U.I.T. are qualitatively poor. We feel that little more is required to be done to improve the roads of the City of Jodhpur. The National

Highway Authorities are directed to improve the conditions of the roads passing through the City. They should also work in coordination with the U.I.T. and the Municipal Corporation. An officer of the National Highway Authorities will regularly participate in the Traffic Management Committee meetings. We disapprove the obstructions created by the National Highway Authorities in the matter of providing parking. They must clearly understand that the work has been undertaken under the orders of this Court. Similarly, the U.I.T., the Municipal Corporation and the P.W.D. should take more effective steps to improve the road conditions of the City of Jodhpur;

(vi) All the authorities are directed to punctually and faithfully comply with the orders of this Court as to removing encroachments from the public places. The anti-encroachment and demolition programmes should be taken as a regular course and not as a drive only. Obstructions on roads in the form of poles, transformers, hoardings, cabins, installed some sort of structure to show place of worship of any religion, trees be shifted or removed. In case of removal of trees, same number of trees be planted at appropriate place. Encroachments on roads, particularly Pal Road, as indicated above, be removed. In case of re-encroachment, matters be reported to the Court by way of initiation of contempt proceedings;

(vii) In the matter of traffic control, effective work has been done. The traffic police has succeeded in controlling the unruly traffic in the City of Jodhpur. However, something more seriously needs to be done to check the movement of unruly City Buses. Unfortunately, the rash driving of the drivers of the Luxury Cars has become hazard for the innocent people thereby increasing the number of accidents. The exemplary penalties be inflicted on drivers of the City Buses driving rashly and so as the cars and motorcycles. The careless driving using mobiles, should be checked and exemplary penalties be imposed;

(viii) Inspite of repeated directions for proper parking, the private Buses are being seen parked in busy areas in the haphazard manner. These buses are mega buses and even double decker which occupy substantial area of the land. Thus, we direct the concerned authorities to earmark the land within a period of six weeks, where the Stand for private buses can be provided. In this regard, the concerned authorities should take into account the report of the Lawyers Core Group;

(ix) The authorities concerned should take effective steps that within a period of one year, the public vehicles use C.N.G. Instead of petrol and diesel;

(x) It is reported that there are large number of small scale industries emitting smoke and all sorts of pollutants inside the City of Jodhpur. It is also reported that they are in operation without licence. Effective steps be taken to shift them outside the City within a period of six months;

(xi) Considering the expansion of the Housing Board Scheme and other Schemes and the increase of traffic manifold, it is directed that effective steps be taken for widening the road proceeding from Akhaliya Choraya towards Chopasni Road. Similarly, the road proceeding from Residency Road to Boranada be further widened. The obstructions in the form of trees, electric poles etc. be removed. While removing the trees, equal number of trees be planted at appropriate places;

(xii) A study be made and if possible, the depot of R.S.R.T.C. Presently situated near the Railway Overbridge adjacent to the Vegetable & Fruit Market be shifted to elsewhere, as it has become a hazard and accident prone;

(xiii) The State Government is directed to make the Solid Waste Management practice as effective for improving the quality of life in urban areas. The Municipal Corporation is directed to properly arrange and supervise the work of Street Sweepers and Labour

force employed in collection, transportation, processing and disposal of waste effectively;

(xiv) The Municipal Corporation, Jodhpur is directed to provide provision for collection, transportation and disposal of construction waste and debris without delay for which appropriate byelaws be prepared to bound down the person, likely to produce construction waste, to deposit with the Local Bodies an approximate amount in advance at the rates as may be prescribed for removal and disposal of construction waste from his premises. Such amount may be deposited at the time when building permission is sought and in case, where such permission is not required, at any time before such waste is produced. Similarly, provision be made for collection of waste and prescribe the rates for collection of waste from Marriage Halls, Community Halls and other functions. This can be multiplied by prescribing the rates for collection of bio-medical waste, hotel and restaurant waste and vegetable, fruit, meat markets waste, garden waste etc;

(xv) The direction given with respect to deputing the Mobile Magistrate and providing him a vehicle is extended upto 30th May, 2007. The decision with respect to further continuance shall be taken by the High Court and the State Government at the

administrative level;

(xvi) The Railway Administration in compliance with the orders of this Court and otherwise as well, has taken effective steps in reducing the congestion outside the Railway Station and providing smooth traffic. However, much is still required to be done. The parking of the cars and two wheelers outside the Railway Station is still found to be unruly. The Railway Administration should take effective steps in that regard; and

(xvii) There shall be complete ban on immersion of idols and other materials during festivals in any of the Water Reservoirs of the City, which results into contamination of water. The District Administration is directed to follow the directions given in this regard in a "public interest litigation" being D.B.Civil Writ Petition No.4938/2003 "Poonam Chand Solanki vs. State of Rajasthan;

(xviii) Inadequate taxation and ineffective management, both, renders the municipal services far from being satisfactory. Thus, the State Government should seriously consider and improve the finance of the Urban Local Bodies, particularly the Municipal Corporation, Jodhpur.

(xix) Last but not the least, we say that any direction or effort by this Court or any other authority, would be of no worth, if the citizens do not actively participate to make the traffic management or other management, effective.

We conclude with the hope and trust that all right thinking people interested in the development of the City, will cooperate with the State and Local Authorities for the betterment of the City of Jodhpur.

(MANAK MOHTA), J. **(N.N.MATHUR), J.**

RANKAWAT JK, PS